IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1702 of 1997

with

SPECIAL CIVIL APPLICATION No 2267 of 1996

with

SPECIAL CIVIL APPLICATION No 7462 of 1996

with

SPECIAL CIVIL APPLICATION No 6749/96 to 6785/96

with

SPECIAL CIVIL APPLICATION No 7170/96 to 7183/96

with

SPECIAL CIVIL APPLICATION No 7292 of 1996

with

SPECIAL CIVIL APPLICATION No 7293 of 1996

with

SPECIAL CIVIL APPLICATION No 10023 of 1996

with

SPECIAL CIVIL APPLICATION NO. 10025 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAIYA PRINTS PVT LTD

Versus

ASSESSMENT AND RECOVERY OFFICER

Appearance:

MS. K.J. BRAHMBHATT for Petitioners in all matters

MR. BHASKAR TANNA, SR. ADVOCATE FOR M/S TANNA ASSOCIATES for the Respondents in all matters

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CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 08/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. In this group of petitions raising identical dispute, the petitioners have challenged the special notices dated 13th February 1996 issued to them by the respondent - Municipal Corporation under Rules 15(2) and 20(2) of Chapter VIII of the Schedule to the Bombay Provincial Municipal Corporation Act, 1949 informing the petitioners that entries were made in the assessment book under Rule 9(a), (b), (c) and (d) of the said Rules, and that if they have any objection against the same, they may be filed within the time mentioned in the notice. There is also a prayer in all these petitions seeking a declaration that the respondents had charged Rs.25=00

from the petitioners on the complaint form illegally, and that it should be refunded. The learned counsel appearing for the petitioners in all these matters stated before us that the petitioners were not pressing for this relief in these matters.

2. According to the petitioners, their plots of Pandesara Industrial Estate were brought within the extended limits of the respondent No.2 - Corporation with effect from 15th November 1994. Before that, the limits of the respondent Corporation had been extended with effect from 1st April 1986 when these plots of the Pandesara Industrial Estate of the GIDC had continued to remain within the revenue limits of Bamroli - Vadod Group Gram Panchayat. In the year 1990, the said Group Gram Panchayat was bifurcated and the plots in question came within the jurisdiction of the separated Vadod Gram Panchayat. According to the petitioners, the property taxes were levied by Vadod Gram Panchayat since 1990 in respect of their plots. It is their case that, till the official year ending on 31st March 1995, the taxes were payable to Vadod Gram Panchayat. After these plots were brought within the limits of the Municipal Corporation w.e.f. 15-11-1994, the taxes imposed by the Corporation became applicable to them by virtue of section 129 of the said Act. The respondent No.1, therefore, served upon the petitioners special notices dated 13-2-1996 informing them about the proposed rateable value of their respective plots fixed by it w.e.f. 15-11-1994. It is the case of the petitioners that the respondents have no authority to issue such special notices fixing rateable value of these plots w.e.f. 15-11-1994 for the period for which the taxes were already levied by the Vadod Gram Panchayat, which was the predecessor of the respondent Corporation, for the period upto 31st March 1995, and that the respondents can only fix the rateable value of these plots w.e.f. the assessment year starting after the expiry of the official year ending on 31st March 1995.

3. The respondent Corporation has filed the affidavit-in-reply in Special Civil Applications Nos. 2267 of 1996 and 7462 of 1996, contending that the petitioners had not produced any evidence to show that they had paid taxes to Vadod Gram Panchayat till 31st March 1995. It is stated that there is no dispute about the fact that earlier some plots of Pandesara Industrial Estate area were included within the limits of the Corporation w.e.f. 1-4-1986 and that, out of that estate, certain plots were left out and had remained within the limits of the Gram Panchayat. It is stated

that the said left out area of GIDC was included within the limits of Surat Municipal Corporation w.e.f. 15-11-1994. According to the Corporation, each plot of the Pandesara Industrial Estate (Vadod) was inspected at the site and requisition forms were given to each of the petitioners for tendering adequate and proper evidence and thereafter, the assessment was made following the procedure laid down under the rules. It is stated that, since the said area was included within the limits of the Corporation w.e.f. 15-11-1994, the assessment was made from that day. According to the Corporation, in view of the provisions of Rule 21A of Chapter VIII of the Schedule to the said Act, the Corporation was entitled to make assessment on and from the date when it came to the notice of the Corporation, that new buildings were erected and that the persons primarily liable had failed to give notice under Rule 5(1). It is stated that the Recovery & Assessment Department, after following the procedure in accordance with law, made assessment and special notices in that regard were also served to the petitioners and public notice was published for the same and thereafter, assessment was made.

4. The learned counsel appearing for the petitioners contended that the impugned special notice dated 13-2-1996 showed that the properties of the petitioners were entered for the purpose of assessment in the assessment book from 15-11-1994 fixing the rateable value thereof. It was argued that levy and assessment of tax could not have been done after the lapse of the official year, and that since the official year was from 1-4-1994 to 31-3-1995, levy and assessment of tax could not have been done even for the period from 15-11-1994 upto 31-3-1995 by issuing the impugned notices dated 13-2-1996. It was submitted that, any recovery effected on the basis of such notices for the said period ending on 31st March 1995 should be refunded or adjusted to the petitioners.

4.1 In support of her contentions, the learned counsel for the petitioners relied upon the following decisions :

[a] A Division Bench decision of this Court in The Municipal Corporation of the City of Ahmedabad v. Jhaveri Keshavlal Lallubhai, reported in VI GLR 228 was cited to point out that, in context of the similar provisions of the Bombay Municipal Boroughs Act, 1925, it was held that, from the integrated picture of the scheme of taxation embodied in the Boroughs Act it emerged that

before a Municipality can impose a tax, it must comply with the procedures set out in the relevant provisions and it is only after that procedure is complied with by the passing of the resolution selecting tax and the approval of the rules prescribing the tax and the sanction of the Government to the rules which provided that the Municipality can impose the tax, the procedure was to be completed before the expiry of the official year and the assessment list must consequently be authenticated before the official year is ended. It was held that, if that be the correct position, it was apparent that the authentication of the assessment lists for all the four official years from 1947-48 to 1950-51 having been made in December 1954, long after the expiry of the respective official years, was invalid and ineffective and no tax could be said to be legally imposed or levied for those official years so as to found the claim for tax made by the Municipality against the rate-payers.

[b] A Division Bench decision of this Court in Anant Mills Co. Ltd. v. Municipal Corporation for the City of Ahmedabad, reported in XIII(2) GLH 897, which was rendered in context of the provisions of the said Act, was cited, pointing out that it was held that, the proposition laid down by the Court in Keshavlal's case (supra), was now impliedly recognised by the Legislature in enacting Rule 21B in Chapter VIII of the Schedule to the said Act. That Rule accepts by necessary implication that, having regard to the scheme of the Corporations Act and the Rules, the assessment of property tax for any particular official year must be completed before the expiry of the official year and thus, gives legislative approval to the decision in Keshavlal's case (supra) and recognises that its ratio would also be applicable in the construction of the provisions of the Corporations Act and the Rules, and having done so, enacts an exception to the rule by providing that in cases falling within it, the assessment book may be prepared and completed even after the expiry of the official year.

[c] The decision in L.M.Patel v. Baroda Municipal Corporation, reported in 1995 (1) GCD 751 (Guj.) was cited to point out that the ratio of the above decisions was reiterated by the Single

Judge. In paragraph 5 of that judgement, the Court held that, under Rule 9 of the said Rules, Assessment Book which was required to be kept by the Commissioner had to contain the entries mentioned therein every official year, and accordingly, rateable value at item No. (b) determined in accordance with the provisions of the Act and the rules, was required to be entered in the Assessment Book every official year. Under Rule 21B, it is only when the said entry cannot be made in the Assessment Book on account of any order of a Court or any other competent authority, the levy, collection or recovery of tax made on the basis of an entry made after expiry of the order, cannot be questioned. The procedure for assessment of levy set out in the provisions of the Rules was required to be complied with before expiry of the official year and no assessment could be made after the official year in view of the provisions of Rules 9, 17, 21 and 21B of the Rules. It was held that the requirement that the assessment must be completed before the close of the official year was a mandatory requirement only subject to the express provision in Rule 21B and once the official year had expired, it would not be open to the Commissioner to assess and levy property tax for that year.

5. The learned Senior Counsel appearing for the respondents in all these petitions contended that the Corporation was under Rules 5, 9, 15, 20, 21A and 21B of the said Rules entitled to recover the tax amounts, because, the recovery was within the time prescribed under Rule 21B of the said Rules. It was argued that there was no intimation given by the petitioners as required by Rule 5(1) in respect of the buildings which existed on these plots and therefore, it is only from the knowledge of the Commissioner about the existence of the buildings that the period of one year should be computed under Rule 21A of the Rules. It was further contended that the notification bringing the plots in question within the area of Municipal Corporation with effect from 15-11-1994 could not have come to the knowledge of the Municipal Commissioner immediately. It was submitted that the order merging these plots in the municipal area was an order by a competent authority and therefore, the provisions of Rule 21B were attracted in the case of these petitioners.

6. The impugned notices which are challenged in

these petitions show that they were special notices issued under Rule 15(2) and Rule 20(2) of the Taxation Rules. These notices were necessitated, because, the properties for which they were issued were brought within the city limits by the notification extending the limits. Under section 3(1) of the said Act, the local areas within the limits specified by the State Government by notification in the official gazette shall constitute the City of Ahmedabad. These limits can be altered from time to time after consultation with the Corporation by the State Government by notification in the official gazette, as provided by sub-section (3) of section 3 of the said Act.

6.1 By virtue of the provisions contained in section 3A of the said Act, taxes, rules etc. applicable in the City automatically extend to the areas included in the City limits from the date on which they are so included and by superseding the taxes, rules etc. which were in force before such inclusion. When the area is included by a notification under section 3(3) of the said Act, the State Government may provide, by an order published in official gazette, for the matters enumerated in sub-section (3) of section 3A, which included in its clause (vii) the continuance within the area so included of all or any budget estimates, assessments, assessment list, or, as the case may be, assessment book, valuations, measurements or divisions made or authenticated by, or in respect of, the surrendering local authority and in force within its area immediately before the notified day, until they are superseded or modified. The buildings in the plots of the petitioners already existed before these plots were included in the City area. The taxes applicable in the City, therefore, became applicable to them on the inclusion of the area of these plots in the City from the date of their inclusion, which admittedly was 15-11-1994.

6.2 Under Rule 15(2), it has been provided that, in every case in which any premises has for the first time been entered in the assessment book as liable to the payment of property - taxes, or in which the rateable value of any premises liable to such payment has been increased, the Commissioner shall, as soon as conveniently may be after the issue of the public notice under sub-rule (1), give a special written notice to the owner or occupier of the said premises specifying the nature of such entry and informing him any complaint against the same will be received in his office at any time within 15 days from the service of the special notice. Therefore, in all cases where the premises were

entered for the first time in the assessment book are liable to payment of property taxes, a notice under Rule 15(2) could be issued and this was done in view of the inclusion of the premises in question within the municipal limits with effect from 15-11-1994.

7. Under Rule 9 of the Chapter VIII of the Schedule, the Commissioner is required to keep a book, to be called "the assessment book", in which, he is required to enter every official year (which starts from 1st of April each year, as defined in section 2(7) of the Act), a list of all buildings or lands or premises in the City with particulars sufficient for identification, rateable value thereof, the amount at which the property is assessed after the complaint, if any, made against any entry, has been disposed of as per the Rules. It appears from the record that the entries were made in the assessment book under Rule 9 with effect from 15-11-1994 in respect of the premises of these petitioners. That date fell in the official year 1-4-1994 to 31-3-1995 and the property taxes applicable in the City applied to these properties from 15-11-1994 to 31-3-1995 in respect of that official year.

7.1 Under Rule 20(1) of the said Taxation Rules, the Commissioner is empowered upon any information at any time during the official year to which the assessment book relates, to amend the same, by inserting any premises previously omitted. Under sub-rule (2) of Rule 20, it is provided that, where any amendment is made under sub-rule (1) which has the effect of imposing on any person any liability for the payment of property taxes which would not be incurred but for such amendment or which has the effect of increasing the rateable value of any premises as stated in the assessment book, a special written notice as provided in sub-rule (2) of Rule 15 shall be given by the Commissioner and, as far as may be, the procedure laid down in Rules 16, 17 and 18 shall be followed. Therefore, the provisions of Rule 15(2) of the said Rules became applicable by virtue of Rule 20(2) in respect of these premises and special notice was required to be issued to these petitioners under Rule 15(2) read with Rule 20(2) of these Rules. There was, therefore, no question of a person primarily liable failing to give notice under Rule 5(1) as stipulated in Rule 21A in this case, because, these were not any new buildings for which such notice was required to be given under Rule 5(1) to the Commissioner by the persons primarily liable, but these were the properties to which City taxes became applicable by virtue of the notifications issued under sections 3(3) and 3A(3) of the

said Act. The Commissioner would obviously have known about these notifications and that is why, he amended the assessment book under Rule 9. There was no question in this case of the Commissioner not having notice of the premises, because, the assessment lists etc. of these premises in force in the area immediately before the notified day were the relevant record from which the absorbing local authority would have already known about the constructions existing on these premises. Even the Commissioner has not taken up the plea which was toyed with by the learned Senior Counsel for the Corporation that he came to know about the existence of these premises at some later date from which the period of one year should be contemplated under Rule 21A. Under Rule 21A, it has been provided that, whenever it is noticed by the Commissioner that a new building has been erected or a building has been re-built or enlarged or any building which was vacant has been re-occupied or the user of any building has been changed and that the person primarily liable for the property taxes on such building has failed to give notice as required by sub-rule (1) of Rule 5, the Commissioner may, within a period of one year from the date on which the aforesaid relevant facts came to his notice, proceed to fix or re-fix the rateable value of such building and assess or re-assess the property taxes on such building in accordance with the provisions of the Act and the Rules with reference to the period commencing from the year during which the building was newly erected or the building was re-built or enlarged or was re-occupied or the change of user took place and accordingly the taxes so assessed may be levied, collected and recovered and the provisions of the Act and the Rules shall so far as may be, apply to such levy, collection and recovery.

8. By Rule 21B, it is provided that, nothing in the foregoing provisions of the Chapter VIII shall affect the preparation and completion of the assessment book or of any part thereof or of any entry therein after the expiry of the year to which it relates, if such preparation or completion was not possible before the expiry of the year on account of any order of a Court or any other competent authority, and the levy, collection and recovery of any tax based on such assessment book, part or as the case may be, entry shall not be called in question merely on the ground that the assessment book, part, or, as the case may be, entry was not prepared or completed during the year to which it related.

8.1 The contention that the notification by which the areas covered by the plots of the petitioners were

included in the City area with effect from 15-11-1994 should be treated as an order of the competent authority within the meaning of Rule 21B is nothing but an exercise in desperation. It cannot be said that, by issuance of such a notification, it was not possible for the Commissioner to complete the assessment book or any part thereof or any entry made therein before the expiry of the year to which it related. The assessment and levy in respect of the period from 15-11-1994 upto 31-3-1995 was obviously required to be completed in the official year ending on 31st March 1995. As per the settled legal position, the assessment must be completed before the close of the official year [Anand Mill's case (supra)]. Therefore, to this limited extent, the recovery sought to be made for the period between 15-11-1994 to 31-3-1995, cannot be sustained since it was not open to the Commissioner to assess and levy property tax for that period on the basis of the special notices issued on 13-2-1996. Therefore, to the extent to which the impugned notice relates to the aforesaid period of 15-11-1994 to 31-3-1995 and purports to assess the taxes for that period, it cannot be sustained, and if any recovery of tax is effected for that period, the petitioners would be entitled to adjustment of the same.

8.2 The impugned special notices dated 13-2-1996 are, therefore, declared to be inoperative only to the limited extent to which they related to the assessment of taxes for the period from 15-11-1994 to 31-3-1995, and the petitioners would be entitled to adjustment of the taxes recovered, if any, for the said period. Rule is made absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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